

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
Rural Broadband Experiments)	WC Docket No. 14-259

To: The Commission

**STATEMENT IN SUPPORT OF APPLICATION FOR REVIEW
OF
LAKE REGION ELECTRIC COOPERATIVE, INC.
BY THE
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

The National Rural Electric Cooperative Association (“NRECA”) hereby submits this Statement in Support of Lake Region Electric Cooperative, Inc.’s (Lake Region) Application for Review of the Wireline Competition Bureau’s (Bureau) August 15, 2016 Memorandum Opinion and Order and Order of Reconsideration (*Waiver Order*).¹ In its *Waiver Order*, the Bureau denied Lake Region’s April 24, 2015 Petition for Waiver that requested the Commission recognize the National Rural Utilities Cooperative Finance Corporation (“CFC”) as an eligible issuer of a letter of credit (LOC) in connection with Lake Region’s rural broadband experiment application. The Petition for Waiver was submitted in a timely manner in response to the

¹ *Connect America Fund; Rural Broadband Experiments*, WC Docket Nos. 10-90 and 14-259, Order and Order on Reconsideration, DA 16-926 (Wireline Comp. Bur., Aug 15, 2016) (*Waiver Order*). Lake Region is not seeking review of the Bureau’s decision to deny the unsuccessful challenge regarding the exclusion of certain census blocks from Lake Region Category 1 application. This Application for Review is limited to the Bureau’s decision denying Lake Region’s request that the CFC be eligible to issue a letter of credit in support of its provisionally-accepted rural broadband experiment bid. As a result, if the application for review is granted, Lake Region would receive \$451,593.13 (instead of \$591,987.00).

Bureau's decision announcing that Lake Region had been provisionally selected for two projects as a Category 1 bidder for rural broadband experiments funding.²

INTRODUCTION

NRECA is the national service organization for more than 900 not-for-profit rural electric cooperatives that provide electric energy to approximately 42 million people in 47 states or approximately 12 percent of electric customers. Rural electric cooperative infrastructure covers 75% of the land mass of the United States. NRECA's members include approximately 65 Generation and Transmission ("G&T") cooperatives and 840 Distribution cooperatives. Rural electric cooperatives were formed to provide safe, reliable electric service to their member-owners at the lowest reasonable cost. Rural electric cooperatives are dedicated to improving the communities in which they serve; management and staff of rural electric cooperatives are active in rural economic development efforts. Electric cooperatives are private, non-profit entities that are owned and governed by the members to whom they deliver electricity. Electric cooperatives are democratically governed and operate according to seven Cooperative Principles.³ Lake Region is a member cooperative of NRECA.

DISCUSSION

The *Waiver Order* is troubling and problematic from multiple perspectives, running roughshod over important rural broadband policy objectives established by the Commission. In May 2016, the Commission determined that CFC had demonstrated that it had possessed both

² See *Wireline Competition Bureau Announces Additional Provisionally Selected Bidders for Rural Broadband Experiments and Sets Deadlines for Submission of Additional Information*, WC Docket Nos. 10-90, 14-259, 30 FCC Rcd 2045-46 (2015).

³ The seven Cooperative Principles are: Voluntary and Open Membership, Democratic Member Control, Members' Economic Participation, Autonomy and Independence, Education, Training and Information, Cooperation among Cooperatives, and Concern for Community.

the financial resources and creditworthiness equivalent to the Top-100 US Banks, concluding that it was in the public interest that CFC be eligible to issue LOCs to winning bidders under the Phase II reverse auction *and* the rural broadband experiments.⁴ The Commission emphasized that CFC had more than made its case as qualified to issue LOCs, noting that CFC is “the largest non-governmental lender for rural utilities” and “has specialized institutional knowledge regarding the types of entities that we expect will participate in universal service competitive bidding to serve fixed locations, and has demonstrated that it has significant and long-term experience in financing the deployment of rural networks.”⁵

Rather than viewing the *Phase II Competitive Order* as an expression of a more inclusive and flexible policy to expand the universe of qualified bidders in declaring CFC eligible to issue LOCs, the Bureau Order summarily dismissed the letter and spirit of the Commission’s recent policy change. As noted in the Application for Review, “good cause” is the standard upon which requests for rule waivers are evaluated.⁶ Clearly, Lake Region’s request for waiver is supported by “good cause,” particularly when the Commission concludes that the rule subject to a pending rule waiver request is no longer in the public interest and modifies its rule consistent with the waiver request.

The *Waiver Order* also implicates the Commission’s policies and interests in extending broadband opportunities to Tribal lands. Lake Region was among the rural broadband applicants that availed itself of the bidding credit for entities that proposed projects serving Tribal census

⁴ See *Connect America Fund et al.*, WC Docket Nos. 10-90, 14-50, and 14-259, Report and Order and Further Notice of Proposed Rulemaking, FCC 16-64, at paras. 126-130, n.262 (rel. May 25, 2016)(*Phase II Competitive Order*).

⁵ *Id.* at para. 130.

⁶ 47 C.F.R. §1.3.

blocks to encourage deployment on Tribal lands.⁷ As noted in its Application for Review, “Lake Region submitted its application for seven (7) Category 1 rural broadband experiment projects seeking to deploy fiber in 253 census blocks on Tribal lands in Oklahoma.”⁸ Rather than seizing the opportunity to implement the Commission’s flexibility in making CFC eligible to issue LOCs to provisionally selected rural broadband experiment winners and furthering the Commission’s goals of promoting the provision of broadband services to Tribal lands, the Bureau inexplicably looked to the policies on letters of credit in effect in 2015, even though the Commission changed its policies months prior to ruling on Lake Region’s rule waiver request.

Even if the discontinued LOC policies were relevant to the Bureau’s determination—which they are not, the LOC commitment letter, which CFC supplied in support of Lake Region’s provisionally-selected winning bid, substantially complied with LOC policies in effect in 2015. The commitment letter apprised the Commission that Lake Region’s LOC would be provided to US Bank—the 5th largest commercial bank in the United States—or another financial institution meeting the Commission’s qualifications.⁹ Thus, the underlying policy consideration that only the Top 100 banks possessed the requisite financial resources to supply an LOC was satisfied by the LOC commitment letter submitted by Lake Region.

The *Waiver Order* is particularly troubling for NRECA. The Commission has taken important steps to support the participation of rural electric cooperatives to help bridge the “digital divide” that separates the country’s major urban areas and many of its rural areas in regard to the availability of Broadband Internet Access Service, with a special emphasis on

⁷ See *Connect America Fund; ETC Annual Reports and Certifications*, WC Docket Nos. 10-90 and 14-58, Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, at 8781, para. 31; 8784, paras. 43-44 (2014)

⁸ Lake Region Application for Review, p. 3.

⁹ *Id.* at 3-4

meeting the widely-documented broadband deployment challenges on Tribal lands.¹⁰ Lake Region’s request for waiver presented the perfect opportunity for the Bureau to follow through and implement important Commission policies. Yet, the Bureau explicably passed.

Over and above the important public policies implicated by the *Waiver Order*, the Bureau’s action is inconsistent with applicable principles of administrative law. As explained in the Application for Review, the Bureau was and remains required to “apply the law in effect” when it issues a decision.¹¹ As the Commission had determined in the *Phase II Competitive Order* that CFC was eligible to issue LOCs in support of both Phase II auction winners and rural broadband experiment winners, the Bureau was obligated to rule consistent with this determination; the *Phase II Competitive Order* was in effect when the *Waiver Order* was adopted.¹²

¹⁰ *Id.* at 8-9.

¹¹ Lake Region Application for Review, pp. 5-7.

¹² The *Phase II Competitive Order* was published in the Federal Register on July 7, 2016 and became effective on August 8, 2016. 81 Fed. Reg. 130,444 (July 7, 2016).

CONCLUSION

In view of the critical Commission policies implicated by the *Waiver Order*, the Commission is respectfully requested to grant Lake Region's Application for Review and take other action consistent with the views expressed herein.

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I, Cassandra Hall, of the law firm of Keller and Heckman LLP, do hereby certify that on this 28th day of September 2016, a copy of the foregoing Statement in Support of Application for Review of Lake Region Electric Cooperative, Inc. by the National Rural Electric Cooperative Association has been served upon the following:

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/s/

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